

# Kansas Adjutant General's Department – State Human Resources Guidelines

2011

10/2011

REF: TAG Policy Letter #28 – K.A.R. 1-9-19

## POLICY

### FELONIES

**Policy:** It is the policy of the Adjutant General's Department to ensure the safety and security of the missions, programs, property and employees of the Adjutant General's Department; and determine during the appropriateness of a person's employment or volunteerism. Adjutant General will take all reasonable and prudent steps to ensure the safety and security of other member employees and the public and maintain public confidence in the Adjutant General's Department.

**Comment:**

- (1) Persons convicted of a felony and sentenced to prison for more than one year are prohibited from employment and volunteer opportunities with the Adjutant General's Department as they would not pass the minimum background check criteria established by the Department of Defense (DoD).
- (2) Persons convicted of a felony and sentenced to prison for less than one year may be prohibited from employment and volunteer opportunities, depending on the circumstances of the respective case.
- (3) All employees, applicants and selectees for employment, and potential/existing volunteers must **self-report** all felony arrests, pending felony charges and convictions\* the next agency working day to their first-line supervisor, higher level supervisor, or Legal (JAG). The person receiving the report must immediately notify the reporting employee's division director or worksite manager. The employee's division director or worksite manager will, in cooperation with Legal (JAG) and SHRO, be informed and, when required, engaged in all facets of the case.  
*\*With respect to felony convictions, this requirement applies even if the sentence has not been imposed or the member employee intends to appeal the conviction.*
- (4) When the employee's division director or worksite manager receives or obtains verification of a felony arrest, charge or conviction, notification will be immediately made to the following:
  - (a) Judge Advocate General's Office-(785) 274-1027
  - (b) State Human Resources Office Director (SHRO) to flag the employee's personnel file. The flag will not be lifted until the civilian criminal charges are resolved and appropriate Legal (JAG), administrative, and/or, personnel action, if any, is completed.-(785) 274-1460
  - (c) Appropriate Security Manager:
    - (i) Army: (785)-274-1067
    - (ii) 190<sup>th</sup>: (785)-831-4209 or 4207
    - (iii) 184<sup>th</sup>: (376)-759-7447
  - (d) Consult with the Information Management Director (or designee) on suspending the member employee's or volunteer's computer access.
  - (e) Consult with the respective Security Manager on suspending the member employee's or volunteer's security clearance.
  - (f) Prohibit the member employee from having any unsupervised public contact until otherwise notified.
  - (g) Immediately, in the case of armed staff, suspend the member employee's access to weapons and ammunition.

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- (4) The employee's division director or worksite manager, Legal (JAG) and SHRO will confer on the nature of the civilian criminal charge and determine if the member employee's presence will create a work distraction for others, is a threat to other member employees, if the person should be relieved of duty, initiate a separation action and/or take other prudent administrative actions. In determining appropriate action, the employee's division director or worksite manager, Legal (JAG) and SHRO will:
- (a) In the case of felony charges and/or convictions of 'Person' felonies (as defined by Kansas statutes), presume that the person should be terminated/separated. The burden is on the employee to prove that he/she should be retained. The burden is also on any employee's division director or worksite manager and those in the chain of command to prove otherwise, if they desire to retain an individual.
  - (b) In the case of felony charges and/or convictions involving 'Dishonesty' (as defined by Kansas statutes) and consultation with Legal (JAG), the member employee's duties and responsibilities will be scrutinized to determine whether the member employee can continue in their current position. The employee's division director or worksite manager, Legal (JAG) and SHRO will pay particular attention to, but not limited to, the member employee's access to personal identifiable information, Federal or State funds, Government credit cards, Federal and State computer and communications systems, and overall danger (physical, material and financial) to the workforce and Kansas Adjutant General's Department.
  - (c) In the case of all other felony charges and/or convictions, determine on a case by case basis if any action is warranted.
- (5) The employee's division director or worksite manager, within ten (10) calendar days, will put a determination in writing with written comments from the JAG office and SHRO and forward it to the next level of authority. Each level of authority has ten (10) calendar days to add their recommendation and refer the case forward to the next level. The Adjutant General is final authority.
- (6) Legal (JAG) will track and monitor the case until final resolution.
- (7) Current employee's of the Adjutant General's Department that self-report felony arrests, pending felony charges and convictions\* may be subject to the following actions:
- \*With respect to felony convictions, this requirement applies even if the sentence has not been imposed or the member employee intends to appeal the conviction.*
- (a) Classified employees may be relieved of duty (admin leave) with pay pending an investigation.
  - (b) Unclassified employees may be relieved of duty (admin leave) with (or without) pay pending an investigation.
  - (c) The official personnel file for that employee, held in the State Human Resource Office, will be flagged. The flag will not be lifted until the civilian criminal charges are resolved and appropriate Legal (JAG), administrative, and/or personnel action, if any, is completed.
  - (d) Employees may not be transferred/promoted/demoted to another position, work schedule, location, organizational unit or have any changes in pay without consultation and approval of Legal (JAG) and the SHRO Director.
  - (e) After review of the documentation, information from the employee and/or an internal investigation, the Adjutant General will determine the appropriate action for an employee, if any, to be taken. Action could include dismissal.

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- (8) Volunteers who self-report felony arrests, pending felony charges and convictions\* may be subject to the following actions:

*\*With respect to felony convictions, this requirement applies even if the sentence has not been imposed or the member employee intends to appeal the conviction.*

- (a) May temporarily or permanently be relieved of their association with the agency.
  - (b) May not be moved to another volunteer position, work schedule, location, organizational unit or have any other changes made without consultation and approval of Legal (JAG) and the SHRO Director.
  - (c) After review of the documentation and/or information obtained from, or on, a potential or existing volunteer, a determination will be made as to the person's continued association with the Adjutant General's Department.
- (9) For Applicants who self-report please refer to the **HIRING** policy.
- (10) Any disagreements with the recommendation of the employee's division director or worksite manager, Legal (JAG) or SHRO will be resolved by the respective chain of command with The Adjutant General being the final authority.
- (11) Failure to comply with any part of this policy or its procedures can, in itself, be grounds for appropriate Legal (JAG), administrative, and/or personnel action, including immediate dismissal.